

REPORT FOR DECISION

Agenda Item	
--------------------	--

DECISION OF:	THE COUNCIL
DATE:	4 July 2012
SUBJECT:	The Localism Act 2011 - New Standards Regime
REPORT FROM:	The Leader
CONTACT OFFICER:	Jayne Hammond – Assistant Director, Legal & Democratic Services
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected councillors. The Council had to adopt new arrangements on 1 July 2012. This report describes the changes and recommends the actions required for the Council to implement the new regime immediately.
OPTIONS & RECOMMENDED OPTION	<p>The recommendations are:</p> <ol style="list-style-type: none"> (1) that the Council adopts the recommended code of conduct for Members as set out at Appendix 1; (2) that the Council adopts the recommended local arrangements to handle complaints about breach of the Code of Conduct for Members as set out in Appendix 2; (3) that the Council delegates to the Monitoring Officer to make arrangements for the recruitment and selection of at least two "Independent Persons" (whose appointment must then be approved by the majority of Council);

	<p>(4) that the Council should establish a Standards Committee composed of nine members and two co-opted independent member; and that the Council should delegate to Standards Committee the powers set out in Appendix 3;</p> <p>(5) that the Council appoint the Mayor as an additional ex-officio Member of Standards and, to Chair the Standards Committee;</p> <p>(6) that the Council should delegate to the Council's Monitoring Officer the powers set out at Appendix 4;</p> <p>(7) that the Council should request the Council's Monitoring Officer to make amendments to the Council's Procedure Rules at Part 4 of the Council's Constitution, in order to give effect to the requirements of the Council's Draft Code of Conduct for Members; in relation to the notification and disclosure of interests and withdrawal from a Council Meeting where a Member has either a Disclosable Pecuniary Interest or a Prejudicial Interest.</p>
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? The report sets out changes to the Council's Constitution which require approval by Council.
Statement by the S151 Officer: Financial Implications and Risk Considerations:	<p>There are no financial implications arising from this report.</p> <p>Members need to remain aware of the ongoing need to disclose offers of gifts and hospitality/conflicts of interest on the register hosted on the Council's intranet.</p>
Statement by Executive Director of Resources:	There are no resource implications arising from this report.
Equality/Diversity implications:	There are no identified negative implications arising from the recommendations.
Considered by Monitoring Officer:	<p>Yes</p> <p>The Localism Act 2011 repeals the current legislative framework so that new arrangements and a new Code have to be put in place. The Standards Committee considered the proposed legislative provisions (on 9 February 2012 and 3 April 2012) and the recommendations in this</p>

	report are in accordance with their recommendations. New regulations and the Commencement Order were made on 6 June 2012, for the regime to come into effect on 1 July 2012.
Wards Affected:	All
Scrutiny Interest:	

TRACKING/PROCESS

DIRECTOR: Deputy Chief Executive

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

1.1. Introduction

On 9 February and 3 April 2012, the Monitoring Officer presented reports to the Council's Standards Committee, outlining the major changes made by the Localism Act 2011. In order to ensure that the Council has compliant arrangements in place under the Localism Act, the Standards Committee agreed to work with the Monitoring Officer to develop proposals for Council approval. On 6 June the Government made an Order bringing the new arrangements into effect on 1 July 2012. The function of replacing the regime can only be discharged by Council.

1.2 The Requirements of the Localism Act 2011

Under the Act, the Council has a statutory duty to promote and maintain high standards of conduct for its Members and Co-opted Members. To assist, it must adopt a Code of Conduct for Members that is consistent with the principles of selflessness: integrity: objectivity: accountability: openness: honesty and leadership. Unlike the current arrangements of standards, there will be no nationally prescribed code, so it is very much left to local choice as to what a new code will look like – subject to and including the principles set out above. The Standards Committee was strongly of the view that the Council's current adopted code had served Members well and so little purpose would be served by making major alterations to it.

Attached at **Appendix 1 is a draft new Code** which has been produced as a result of collaboration with colleagues in other AGM authorities. The general consensus across Greater Manchester is that the existing Code was reasonably well understood and there was little purpose in making major alterations to it (beyond removing references to Member conduct in private life, which is beyond the scope of the new statutory framework).

2.0 Interests

2.1 The Act abolishes the concepts of "personal and prejudicial interests" and replaces them with "Disclosable Pecuniary Interests" (DPI's). The Regulations defining these were only made on 6 June 2012; and at the time of the meetings of the Standards Committee the Government had still not published the statutory detail needed. DPI's are broadly equivalent to the current prejudicial interests. However, the Act provides that failure to declare a DPI may constitute a criminal offence, which on conviction may lead to a fine of up to £5,000 and/or disqualification from office for a period of up to 5 years. The Regulations also extend the requirement for registration to cover, not just the members own interests but those of the Members' spouse, civil partner or someone living with the Member in a similar capacity. Once again Members are obliged to register DPI's within 28 days of becoming a Member and failure to register is made a criminal offence, but would not prevent the Member from acting.

2.2 The provisions of the Act also require an authority's Code to contain appropriate requirements for registration and disclosure of other pecuniary and non pecuniary interests. In so far as the Code requires the registration of other interests, failure to do so would not be a criminal offence but merely a failure to comply with the Code.

3.0 Complaints

- 3.1 A further area for reform is the Council's arrangements for handling complaints about the Code of Conduct. The Council is required to have local arrangements in place to handle complaints. The Standards Committee was very clear that the new arrangement should be as proportionate and cost effective as possible. Accordingly, their view is that the initial receipt, assessment, rejection or investigation should be delegated to the Monitoring Officer. Only those cases where there is clear evidence of a breach of the Code of Conduct, following investigation, will go in front of a panel of members for decision and sanction.
- 3.2 Emphasis should also be placed in securing mediated outcomes wherever possible. Finally, the Standards Committee felt it was important that when a complaint is received about a Member, the Member is invited to comment at the earliest opportunity so their views are available when the Monitoring Officer makes a decision as to whether or not to accept a complaint for investigation. **Appendix 2** sets out **detailed arrangements** for approval by Council.

4.0 Membership of the Standards Committee

- 4.1 From 1 July 2012, if the Council decides to retain a Standards Committee then the membership is a matter of local choice. However, only elected Members will have voting rights and there is no longer a requirement to include independent Co-opted voting Members. It is proposed that the Council retain a Standards Committee. As the political parties on the Council are formed into groups, the political proportionality rules will apply, unless the Council resolves to waive them (with no Member voting against). It is proposed that from 1 July 2012 the Council's Standards Committee shall be comprised of nine Council Members. The Standards Committee recognised the value that independent Co-opted Members bring to the ethical framework and the wider governance structures of the Council; and wanted to ensure that the experience of the Independent Members could be utilised and that an inclusive group of members continue to work together. It is therefore proposed that two Independent Members should be co-opted onto the Standards Committee, if possible.
- 4.2 ***Consideration should be given as to whether the Mayor should be an ex-officio additional member of the Committee and whether the Mayor should be appointed to the Chair.***

5.0 Appointment of the Independent Person

- 5.1 The current Co-opted independent Members cease to hold office. The Council must appoint at least one "Independent Person" – essentially not a current or former officer or member of the Council or a relative or close friend of either of the aforementioned categories. The independent person must **be consulted before making a decision on a Member conduct complaint that has been investigated. The Council may also consult with that person when deciding whether to accept or reject a new complaint when it is received. The Independent Person will also be available for consultation by the Member who is the subject of the complaint.**
- 5.2 Appointment must be made by full Council and given the number of roles that the Independent Person may undertake, this creates potential for conflict issues. The Monitoring Officer recommends that the Council should appoint at least two Independent Persons.
- 5.3 As a result of concerns raised by a number of authorities as to the potential difficulty in finding suitable candidates to act as Independent Persons, the

Government has made transitional arrangements which provide that a person may be appointed to act as an Independent Person where they have been a Co-opted Member of the Council's Standards Committee, so long as they are not a Member or Co-opted Member of the Council's Standards Committee on 1 July 2012.

6.0 Sanctions

Sanctions currently available to the Standards Committee have been abolished and therefore the only sanctions available, subject to Council approval, are as follows:

- Report the findings to Council for information;
- Recommend to group leaders that Members be removed from Committees;
- Recommending to the Leader that a Member be removed from the Cabinet;
- Instructing the Monitoring Officer to arrange training for a Member;
- Removing Members from outside bodies;
- Withdrawing facilities for a Member, e.g. computer (providing it does not obstruct the democratic process); and
- Excluding a Member from the Council offices, i.e. providing them with a single point of contact.

In determining what sanctions are available, the Standards Committee has been cognisant that a Member must not be precluded from carrying out their duties by virtue of the sanction.

7.0 Appeal

The Localism Act does not require the Council's arrangements to include any appeals mechanism giving either a complainant and/or a subject Member a right of appeal against a decision they are not happy with. The Council's draft arrangements provide that (subject to judicial review or a decision of a Local Ombudsman), there is no right of appeal by either the complainant or the subject Member against the decision of the Monitoring Officer or of the Standards Hearing Sub-Committee.

8.0 Delegation

As the Localism Act does not give either the Council's voluntary Standards Committee or the Monitoring Officer special powers to deal with complaints against Members, it is necessary to delegate appropriate powers in order to allow the Monitoring Officer and the Standards Hearing Sub-Committee to give effect to the Council's draft arrangements. The necessary delegations to the Council's Standards Committee are included in the **proposed delegations attached at Appendix 3** and those to the Council's Monitoring Officer are included in **Appendix 4**.

9.0 Standing Orders

In order to give effect to the Council's draft Code of Conduct in relation to disclosure and withdrawal from a Council meeting, where a Council Member has either a DPI or a Prejudicial Interest the Council is requested to delegate to the Monitoring Officer the necessary amendments to the Council Procedure Rules at Part 4 of the Constitution.

10.0 Dispensations

The provisions in relation to the grant of dispensations are significantly changed under the Localism Act. The Council is given discretion to delegate the power to grant these to the Standards Committee or to the Monitoring Officer. These may be granted to a Member who has a DPI on one of the following grounds:

- (1) So many Members have DPI's that it would impede the transaction of the business;
- (2) Without the dispensation the strengths of political groups on the Body would be so upset as to alter the likely outcome of any vote on the matter;
- (3) Without the dispensation, every member of the Cabinet would have a DPI prohibition from participating;
- (4) The grant of the dispensation would be in the interest of the inhabitants of the authority's area; or
- (5) It is otherwise appropriate to grant the dispensation.

It is recommended that power to grant a dispensation can be delegated to the Monitoring Officer in respect of grounds 1 – 3 as these are relatively objective. There could also be an appeal to the Standards Committee. It is proposed to delegate power on grounds 4 and 5 to the Standards Committee.

11.0 Combined Authority and the Association of Greater Manchester Authorities

Working collaboratively across the Greater Manchester area will increase as Government devolves further powers to the City Region. Such collaboration has been supported by the national Code of Conduct, which has ensured that Members working together from different authorities have been the subject of the same Code of Conduct. Discussions with Monitoring Officers and Standards Committee Chairs have resulted in a general agreement that a common code should, where possible, be adopted by all of the ten local authorities. Therefore, it is intended that these provisions be used within each of the authorities, to ensure a consistent approach. (It is however, open to an individual authority to make variations as it is a local choice).

12.0 Accordingly, Council is recommended to adopt the Code and arrangements set out in this report as its Standards Regime.

List of Background Papers:

Reports to Standards – 9 February 2012 and 3 April 2012
Chapter 7, Sections 26 to 37 and Schedule 4 of the Localism Act 2011
The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012
The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

Contact details:

Jayne Hammond - Assistant Director of Legal and Democratic Services
0161 253 5237

PRE-AMBLE TO CODE OF CONDUCT FOR MEMBERS

1. Introduction

The Council is determined to provide excellent local government for the people of the Borough. It promotes and maintains high standards of conduct by Members and Co-opted Members and has adopted a Code of Conduct for Members, in line with its obligations under section 27(2) of the Localism Act 2011.

2. General Principles of Conduct for Members and Co-opted Members

The Code and the Guidance are based on the following General Principles.

2.1 General Principles

Members and co-opted Members must behave according to the highest standards of personal conduct in everything they do as a Member. In particular they must observe the following principles of conduct, some of which are set out in law.

2.2 Selflessness

Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

2.3 Honesty and Integrity

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

2.4 Objectivity

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

2.5 Accountability

Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

2.6 Openness

Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

2.7 Personal Judgement

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

2.8 Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

2.9 Duty to Uphold the Law

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

2.10 Stewardship

Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

2.11 Leadership

Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

3. Training

- 3.1 Each Member must attend training on the Code of Conduct/ethical standards, in addition to any current requirements to receive training for specific Committees, for example Planning Control or Licensing Committees.

THE CODE OF CONDUCT

Part 1 General Provisions

1. Introduction and Interpretation

- 1.1 This Code applies to you as a member of the Council.
- 1.2 It is your responsibility to comply with this Code. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and /or disqualification from office for a period of up to 5 years. In this Code - "meeting" means any meeting of:
- (a) the Council;
 - (b) any of the Council's committees or sub-committees, joint committees or joint sub-committees;
 - (c) the Cabinet or any committee of the Cabinet.
- 1.3 "Member" includes a co-opted member and an appointed member.

2. Scope

- 2.1 Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you are acting as a member or co-opted member of the Council or an appointed member of a joint committee, and, references to your official capacity are construed accordingly.
- 2.2 This Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 2.3 Where you act as a representative of the Council:
- (a) on another relevant authority, including the Greater Manchester Combined Authority, the Greater Manchester Fire & Rescue Authority and the Greater Manchester Waste Disposal Authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General Obligations

- 3.1 You must not:
- (a) do anything which may knowingly cause the Council to breach the Equality Act 2010;
 - (b) bully or be abusive to any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be:

- (i) a complainant,
- (ii) a witness, or
- (iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

4. You must not:

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is:

(a) reasonable and in the public interest; and

(b) made in good faith and in compliance with the reasonable requirements of the Council; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

6. You:

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority:

(i) act in accordance with the Council's reasonable requirements; and

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

- 7.** (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by:
- (a) The Council's chief finance officer; or
 - (b) The Council's monitoring officer,
- where that officer is acting pursuant to his or her personal statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2 - Disclosable Pecuniary Interests

8. Notification of Disclosable Pecuniary Interests

8.1 Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.

[Note: Standing order X requires existing members and co-opted members of the Council to notify the Monitoring Officer of disclosable pecuniary interests within 28 days of the adoption of the Code]

8.2 A 'disclosable pecuniary interest' is an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in the table below.

8.3 "Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 month period prior to notification of the interest in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation Act) 1992 (a).
Contracts	Any contract which is made between you or your partner (or a body in which you or your partner has a beneficial interest) and the Council - (a) under which goods or services are to be provided or works are to be executed: and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of Bury Metropolitan Borough Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Bury Metropolitan Borough Council for a month or longer.

Corporate Tenancies	<p>Any tenancy where (to your knowledge) -</p> <p>(a) the landlord is the Council: and</p> <p>(b) the tenant is a body in which you or your partner has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where -</p> <p>(a) that body (to your knowledge) has a place of business or land in the area of Bury Metropolitan Borough Council; and</p> <p>(b) either -</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you or your partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

8.3 For the purposes of the above

- (a) "a body in which you or your partner has a beneficial interest" means a firm in which you or your partner is a partner or a body corporate of which you or your partner is a director, or in the securities of which you or your partner has a beneficial interest.
- (b) "director" includes a member of the committee of management of an industrial and provident society.
- (c) "land" excludes an easement, interest or right in or over land which does not carry with it a right for you or your partner (alone or jointly) to occupy the land or receive income, and
- (d) "securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

9. Non Participation in Case of Disclosable Pecuniary Interest

9.1 If you are present at a meeting [of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, or the executive or committee of the executive] and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting,

- (a) You must not participate in any discussion of the matter at the meeting.
- (b) You must not participate in any vote taken on the matter at the meeting.

- (c) If the interest is not registered, you must disclose the interest to the meeting.
- (d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

[Note: In addition, Standing Order X requires you to leave the room where the meeting is held while any discussion or voting takes place, and in the case of a registered (as well as unregistered interest) to disclose it to the meeting].

9.2 Where a Cabinet member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the Cabinet member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

10. Offences

10.1 It is a criminal offence to:

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- As an Cabinet Member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest
- As an Cabinet Member discharging a function acting alone, and having a disclosable pecuniary interest in a matter, taking any steps in relation to such a matter.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

10.2 The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

Part 3 - Other Interests

11. Notification of Personal Interests

11.1 In addition to the disclosable pecuniary interests notifiable under the Localism Act 2011, you must, within 28 days of -

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the categories set out in paragraph 11(2) below for inclusion in the register of interests.

11.2 You have a personal interest in any business of your authority where it relates to or is likely to affect -

- (a) any body of which you are in a position of general control or management and to which you are appointed or nominated by your authority;
- (b) any body -
 - (i) exercising functions of a public nature;
 - (ii) directed to charitable purposes; or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are in a position of general control or management;

- (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least [£100], or

12. Disclosure of Interests

12.1 Subject to paragraphs 12.4 to 12.7, where you have a personal interest described in paragraph 11.2 above or in paragraph 12.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

12.2 You also have a personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a *relevant person* to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward, affected by the decision;

12.3 In paragraph 12.2, a *relevant person* is:

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in paragraph 11.2(a) or (b).

12.4 Where you have a personal interest in any business of the Council which relates to or is likely to affect a body described in paragraph 11.2(a) or 11.2(b)(i), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

12.5 Where you have a personal interest in any business of the Council of the type mentioned in paragraph 11.2(c), (gifts and hospitality) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

12.6 Where you have a personal interest but, by virtue of paragraph 16, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

12.7 Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

13. Non Participation in Case of Prejudicial Interest

13.1 Where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business:

- (a) affects your financial position or the financial position of a person or body described in paragraph 12.3 ;or
- (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 12.3.

13.2 Subject to paragraphs 13.3 and 13.4, where you have a prejudicial interest in any business of your authority:

- a) You must not participate in any discussion of the matter at the meeting.
- b) You must not participate in any vote taken on the matter at the meeting.
- c) If the interest is not registered, you must disclose the interest to the meeting.
- d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

[Note: In addition Standing Order X requires you to leave the room where the meeting is held while any discussion or voting takes place].

- 13.3 Where you have a prejudicial interest in any business of the Council, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.
- 13.4 Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your authority in respect of:
- (a) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay; and
 - (c) any ceremonial honour given to members.
 - (d) housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
 - (e) an allowance, payment or indemnity given to members;
 - (f) setting council tax or a precept under the Local Government Finance Act 1992.
- 13.5 Where, as a Cabinet Member, you may discharge a function alone, and you become aware of a prejudicial interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

14. Interests Arising in Relation to Overview and Scrutiny Committees

In any business before an overview and scrutiny committee of the Council (or of a sub-committee of such a committee) where:

- (a) that business relates to a decision made (whether implemented or not) or action taken by the Executive/Cabinet or another of the authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the Executive/Cabinet, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken,

you may attend the meeting of the overview and scrutiny committee for the purpose of explaining the reasons for the decision, or answering questions or giving evidence relating to the business, but you cannot participate otherwise in the discussion or in any vote on the matter.

Part 4 - General Matters Relating to Parts 2 and 3

15. Register of Interests

Subject to paragraph 16 any disclosable pecuniary interests or personal interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

16. Sensitive interests

This paragraph applies where you consider that disclosure of the details of a disclosable pecuniary interest or a personal interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees. In these circumstances, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2) of the Localism Act 2011.

17. Dispensations

The Council may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest or a prejudicial interest.

BURY COUNCIL

Arrangements for dealing with complaints that Council Members have failed to comply with the Council's Code of Conduct for Members

1. Introduction

- 1.1 This procedure applies when a complaint is received that a Member or Co-opted Member of the Council has or may have failed to comply with the Code of Conduct for Members.
- 1.2 The person making the complaint will be referred to as "the Complainant" and the person against whom the complaint is made will be referred to as the "Subject Member".
- 1.3 No Member or Officer of the Council will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter.

2. Making a Complaint

- 2.1 A complaint must be made in writing either by post or e-mail to; The Monitoring Officer, Chief Executive's Department, Town Hall, Knowsley Street, Bury or j.m.hammond@bury.gov.uk.
- 2.2 The Monitoring Officer will acknowledge receipt of the complaint within ten working days of receiving it and, at the same time, write to the Subject Member with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Member may, within five working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the initial assessment of the complaint.

3. Initial Assessment of Complaint

- 3.1 The Monitoring Officer will review the complaint and, following consultation with the Independent Person take a decision (initial assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

The complaint will be rejected if;

- The complaint is not against one or more named Members or co-opted Members of the Council;
- The Subject Member was not in office at the time of the alleged conduct.
- The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.

3.2 If the complaint has not been rejected on the grounds in 3.1 the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected;

- Whether a substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and
 - i. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and
 - ii. Whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat;
- Whether the complaint suggests that there is a wider problem throughout the Authority;
- Whether it is apparent that the Subject Member is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response.

The Monitoring Officer will consult with the Independent Person and then give his decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question of how to proceed to [a Sub-Committee] of the Standards Committee.

4. Additional Information

4.1 The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation.

4.2 Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the Council (in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

- 4.3 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code of Conduct.

5. Confidentiality

- 5.1 If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.
- 5.2 As a matter of fairness and natural justice the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
- 5.3 If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the subject Member.

6. Investigation

- 6.1 The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer from another Council, or an external investigator.
- 6.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of Council resources and shall be interpreted in line with these principles.
- 6.3 The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to the Monitoring Officer decision on confidentiality.
- 6.4 At the end of their investigation, the Investigating Officer will produce a report and will send a copy of that report to the Monitoring Officer. [*The Investigating Officer may before that produce a draft report and send copies to the Complainant and Subject Member for comments on matters of fact. The Investigating Officer will take such comments into account before issuing their report to the Monitoring Officer*]

7. Investigating Officer finding of no failure to comply with the Code of Conduct

- 7.1 Where the Investigating Officer's report finds that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.
- 7.2 The Monitoring Officer will write to the Complainant and the Subject Member with a copy of the decision and the Investigating Officer's report.
- 7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

8 Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct.

Where the Investigating Officer's report finds that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then having consulted the Independent Person either send the matter for local hearing before the hearing panel or seek local resolution.

8.1 Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a local hearing without further reference to the Complainant or the Subject Member.

8.2 Local Hearing

Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the Complainant and/or Subject Member refuses to accept local resolution, then the Monitoring Officer will report the Investigating Officer's findings to the Hearing Panel which will conduct a local hearing before deciding whether the Member has failed to comply with a Code of Conduct and, if so, what action (if any) to take in respect of the Member.

9. Constitution of the Hearing Panel

The Hearing Panel is a sub-committee of the Council's Standards Committee. It will comprise of at least one of the independent Members co-opted to the Standards Committee and three elected Members of the Standards Committee of whom one should be a Member of the minority party.

The Independent Person is invited to attend all meetings of the Hearing Panel and their views must be sought and taken into consideration before the Hearing

Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

10. The Independent Person

10.1 The Independent Person must be a person who has applied for the post following advertisement of a vacancy for the post, and appointed by a positive vote from a majority of all the Members of the Council at a meeting of the full Council.

10.2 A person is not eligible for appointment if they:

- are, a Member, co-opted Member or officer of the Council;
- subject to Paragraph 10.3 below, have within the past five years been a Member, co-opted Member or officer of Bury Council,
- are a relative or close friend of a person within the bullet points above.

10.3 A person may be appointed as an Independent Person if they are not a Member of the Standards Committee on 1 July 2012, but have held such a post at any time during the 5 years ending on 30 June 2012, provided that this only applies to appointments made before 1 July 2013.

10.4 For the purpose of paragraph 10.2, "relative" means:

- Spouse or civil partner;
- Living with the other person as husband and wife or as if they were Civil partners;
- Grandparents of the other person;
- A lineal descendant of a grandparent of the other person;
- A parent, sibling or child of the person within the above bullet points;
- A spouse or civil partner of a person within the above bullet points; or
- Living with a person within the above bullet points as husband and wife or as if they were civil partners.

11. Action

Where a Hearing Panel finds that a Subject Member has failed to comply with the Code of Conduct, the Council has delegated to the Standards Committee (and the Standards Committee has sub-delegated to the Hearing Panel), such of its powers to take action in respect of Subject Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearing Panel may:

- Publish its findings in respect of the Subject Member's conduct;
- Recommend to Council that the Member be censured;
- Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
- Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer to arrange training for the Member;

- Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council
- Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or
- Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances

12. Withdrawal of a Complaint

In the event that a Complainant withdraws a complaint at any time prior to a decision having been made by a Hearing Panel, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint but shall, in taking such a decision take into account any issues which may arise under Paragraph 3.1(c) of the Code of Conduct.

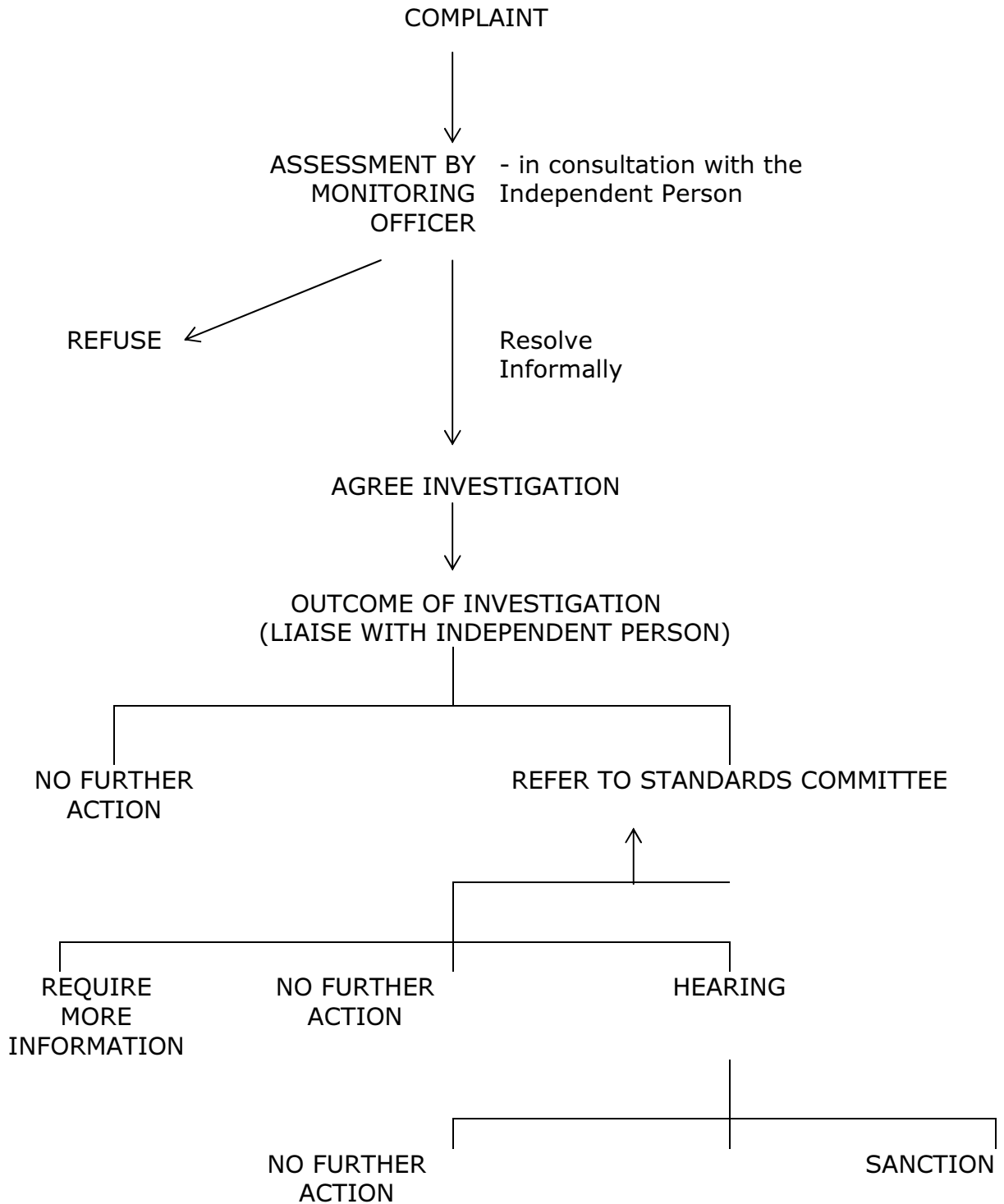
13. Revision of these Arrangements

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure fair consideration of any matters.

14. Appeals

Subject to judicial review or a decision of a local ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the Hearing Panel.

FLOW CHART COMPLAINTS



BURY COUNCIL**Delegations to Standards Committee**

Council is asked to delegate to Standards Committee the following powers:-

1. To promote and maintain high standards of conduct by councillors, co-opted members and church and parent governor representatives;
2. To assist councillors, co-opted members and church and parent governor representatives to observe the Council's Code of Conduct for Members;
3. To advise the Council on the adoption, revision or replacement of the Council's Code of Conduct for Members and the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Council's Code of Conduct for Members ("the Council's Arrangements");
4. To monitor the operation of the Council's Code of Conduct for Members and the Council's Arrangements;
5. To advise, train, or arrange to train councillors and co-opted members and church and parent governor representatives to observe the Council's Code of Conduct for Members;
6. To determine in accordance with the Council's Arrangements whether a Council member has failed to comply with the Council's Code of Conduct for Members and, if so, to determine what action (if any) to take in respect of the Council member.
7. To delegate such of the Council's powers as can be delegated to take decisions in respect of decisions in respect of a Council member who is found on a hearing in accordance with the Council's Arrangements to have failed to comply with the Council's Code of Conduct for Members, such actions to include:
 - Publication of the findings of the Standards (Hearing) Sub-Committee in respect of the Subject Member's conduct;
 - Recommendation to Council that the Subject Member should be censured;
 - Recommendation to the Subject Member's group leader (or in the case of ungrouped members to Council) that the Subject Member should be removed from any or all committees or sub-committees of the Council;
 - Recommendation to the Leader of the Council that the Subject Member should be removed from the Cabinet, or removed from their portfolio responsibilities.
 - Instructing the Monitoring Officer to arrange training for the Subject Member;
 - Recommendation to Council that the Subject Member should be removed from all appointments to which the Subject Member has been appointed or nominated by the Council.
 - Withdrawal of facilities provided to the Subject member by the Council, such as a computer, website and/or e-mail and Internet access; or
 - Placing such restrictions on the Subject Member's access to Council staff, buildings or parts or buildings as may be reasonable in the circumstances.

- 8. Dispensations
- 8.1 To grant dispensations from Section 31(4) of the Localism Act 2011 (after consultation with the Independent Person) if, having had regard to all relevant circumstances, the Standards Committee
 - (i) considers that granting the dispensation is in the interests of persons living in the Council's area, or
 - (ii) considers that it is otherwise appropriate to grant a dispensation.
- 8.2 To determine appeals against the Monitoring Officer's decision on the grant of dispensations.

BURY COUNCIL

Delegations to Council's Monitoring Officer

Council is asked to delegate to the Council's Monitoring Officer the following powers:

1. To act as the Council's Proper Officer to receive complaints that Council members have failed to comply with the Council's Code of Conduct for Members;
2. To determine, after consultation with the Independent Person and in accordance with the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Council's Code of Conduct for Members ("the Council's Arrangements") whether to reject, informally resolve or investigate a complaint.
3. To seek informal resolution of complaints that Council members have failed to comply with the Council's Code of Conduct for Members wherever practicable.
4. To refer decisions dealing with a complaint against a Council Member to the Standards Committee in exceptional circumstances.
5. To arrange for the appointment of an Investigating Officer to investigate a complaint where the Monitoring Officer (in consultation with the Independent Person) determines that a complaint merits formal investigation.
6. To issue guidance to be followed by an Investigating Officer on the investigation of complaints.
7. To determine, after consultation with the Independent Person and in accordance with the Council's Arrangements, to confirm an Investigating Officer's finding of no failure to comply with the Council's Code of Conduct for Members.
8. Where an Investigating Officer's report finds that the Subject Member has failed to comply with Council's Code of Conduct for Members, to determine, after consultation with the Independent Person and in accordance with the Council's Arrangements, either to seek a local resolution or to send a matter for local hearing.
9. Independent Persons
 - 9.1 To make arrangements, to advertise a vacancy for the appointment of (i) Independent Persons and (ii) Co-Opted Independent Members.
 - 9.2 To make arrangements, in consultation with the Chair of the Council's Standards Committee for short-listing and interviewing candidates for appointment as Independent Persons and to make recommendations to Council for appointment.

10. Council's Register of Member's Interests

10.1 To prepare and maintain a new Council Register of Member's Interests to comply with the requirements of the Localism Act 2011 and the Council's Code of Conduct for Members, and ensure that it is available for inspection and published on the Council's website as required by the Act.

11. Dispensations

To grant dispensations from Section 31(4) of the Localism Act 2011 if, having had regard to all relevant circumstances, the Monitoring Officer:

- (i) considers that without the dispensation the number of persons prohibited by section 31(4) of the Localism Act from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
- (ii) considers that without the dispensation each member of the Council's Executive would be prohibited by section 31(4) of the Localism Act from participating in any particular business to be transacted by the Council's Executive.
- (iii) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.